

1 Richard M. Valdez, Bar No. 156957
James G. Sandler, Bar No. 067407
2 **SANDLER, LASRY, LAUBE, BYER & VALDEZ LLP**
402 West Broadway, Suite 1700
3 San Diego, CA 92101-3542
Telephone (619) 235-5655
4 Facsimile (619) 235-5648
E-mail: rvaldez@sllbv.com
5 E-mail: jsandler@sllbv.com

6 Attorneys for Defendant
H. THOMAS MORAN, II, Court-Appointed
7 Receiver of LYDIA CAPITAL, LLC

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 THE LINCOLN NATIONAL LIFE INSURANCE
12 COMPANY,

13 Plaintiff,

14 v.

15 H. THOMAS MORAN, II, Court-Appointed
Receiver of LYDIA CAPITAL, LLC,

16 Defendant.

Case No. 08-CV-0023-IEG-NLS

**ANSWER OF DEFENDANT H.
THOMAS MORAN, II, AS COURT-
APPOINTED RECEIVER OF LYDIA
CAPITAL, LLC TO COMPLAINT
FOR DECLARATORY JUDGMENT**

DEMAND FOR JURY TRIAL

17
18 Defendant H. Thomas Moran, II, Court-Appointed Receiver of Lydia Capital, LLC,
19 ("Moran") for his Answer to Plaintiff's Complaint for Declaratory Judgment ("Complaint"), avers
20 and states as follows:

21 1. With respect to paragraph 1 of the Complaint, Moran admits that Plaintiff has brought
22 the instant action seeking declaratory judgment under 28 U.S.C. § 2201. Moran further admits that
23 Lydia Capital, LLC ("Lydia") acquired a beneficial interest in the Trust at issue and is currently in
24 receivership following the initiation of litigation by the United States Securities & Exchange
25 Commission ("S.E.C."). Moran is without sufficient information to admit or deny the remainder of
26 the allegations in paragraph 1 of the Complaint; therefore, the same are denied.

27 ///

28 ///

ANSWER TO "PARTIES" ALLEGATIONS

2. Based upon information and belief, Moran admits the allegations of paragraph 2 of the Complaint.

3. Moran admits the allegations of paragraph 3 of the Complaint.

ANSWER TO "JURISDICTION AND VENUE" ALLEGATIONS

4. Based upon information and belief, Moran admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) as alleged in paragraph 4 of the Complaint.

5. With respect to the jurisdictional allegations of paragraph 5 of the Complaint, Moran admits that Plaintiff has brought this action with respect to property that is within the Lydia Receivership and that the Receivership Court granted Plaintiff leave to file an action concerning the validity of the Policy issued to the Trust. Moran denies the remainder of the allegations in paragraph 5 of the Complaint.

6. Moran denies the allegations of paragraph 6 of the Complaint.

BACKGROUND

7. Paragraph 7 of the Complaint does not contain factual averments that require a response from Moran. In the event these general allegations should require a response, Moran is without sufficient information to admit or deny the allegations; therefore, these allegations are denied.

8. Paragraph 8 of the Complaint does not contain factual averments that require a response from Moran. In the event these allegations should require a response, Moran is without sufficient information to admit or deny the allegations; therefore, these allegations are denied.

9. Paragraph 9 of the Complaint does not contain factual averments that require a response from Moran. In the event these allegations should require a response, Moran is without sufficient information to admit or deny the allegations; therefore, these allegations are denied.

10. Paragraph 10 of the Complaint does not contain factual averments that require a response from Moran. In the event these allegations should require a response, Moran is without sufficient information to admit or deny the allegations; therefore, these allegations are denied.

1 11. Paragraph 11 of the Complaint does not contain factual averments that require a
2 response from Moran. In the event these allegations should require a response, Moran is without
3 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

4 12. Paragraph 12 of the Complaint does not contain factual averments that require a
5 response from Moran. In the event these allegations should require a response, Moran is without
6 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

7 13. Paragraph 13 of the Complaint does not contain factual averments that require a
8 response from Moran. In the event these allegations should require a response, Moran is without
9 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

10 14. Paragraph 14 of the Complaint does not contain factual averments that require a
11 response from Moran. In the event these allegations should require a response, Moran is without
12 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

13 15. Paragraph 15 of the Complaint does not contain factual averments that require a
14 response from Moran. In the event these allegations should require a response, Moran is without
15 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

16 16. Paragraph 16 of the Complaint does not contain factual averments that require a
17 response from Moran. In the event these allegations should require a response, Moran is without
18 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

19 17. Paragraph 17 of the Complaint does not contain factual averments that require a
20 response from Moran. In the event these allegations should require a response, Moran is without
21 sufficient information to admit or deny the allegations; therefore, these allegations are denied.

22 18. Based upon information and belief, Moran admits that on or about December 22,
23 2006, Roy Keith Black submitted an Application to Plaintiff for a \$3,000,000.00 life insurance
24 policy. Moran is without sufficient information or belief to admit or deny the remainder of the
25 allegations in paragraph 18 of the Complaint; therefore, these allegations are denied.

26 19. Based upon information and belief, Moran admits the allegations in paragraph 19 of
27 the Complaint.
28

1 20. Based upon information and belief, Moran admits the allegations in paragraph 20 of
2 the Complaint.

3 21. Based upon information and belief, Moran admits the allegations in paragraph 21 of
4 the Complaint.

5 22. Moran is without sufficient information or belief to admit or deny the allegations in
6 paragraph 22 of the Complaint; therefore, these allegations are denied. Nonetheless, if these
7 allegations are proven by Plaintiff, the information regarding Mr. Black's financial-condition and/or
8 any bankruptcy filing by him was available to Plaintiff before Plaintiff issued the Policy.

9 23. Moran is without sufficient information or belief to admit or deny the allegations in
10 paragraph 23 of the Complaint; therefore, these allegations are denied. Nonetheless, if these
11 allegations are proven by Plaintiff, the information regarding Mr. Black's financial condition and/or
12 any bankruptcy filing by him was available to Plaintiff before Plaintiff issued the Policy.

13 24. Moran is without sufficient information or belief to admit or deny the allegations in
14 paragraph 24 of the Complaint; therefore, these allegations are denied.

15 25. With respect to the allegations contained in paragraph 25 of the Complaint, Moran
16 admits that Mr. Black indicated in the Application he had not been "involved in any discussion about
17 the possible sell or assignment of the Policy to a life settlement, viatical or secondary market
18 provider", as alleged in paragraph 25 of the Complaint.

19 26. Based upon information and belief, Moran admits the allegations in paragraph 26 of
20 the Complaint.

21 27. Moran is without sufficient information or belief to admit or deny the allegations in
22 paragraph 27 of the Complaint; therefore, these allegations are denied.

23 28. With respect to the allegations in paragraph 28 of the Complaint, Moran admits that
24 on January 28, 2007, Plaintiff issued Life Insurance Policy No. JF5567566, with a total death benefit
25 of \$3,000,000.00 on the life of Mr. Black. Moran is without sufficient information to admit or deny
26 the remainder of the allegations in paragraph 28; therefore, these allegations are denied.

27 29. Based upon information and belief, Moran admits the allegations in paragraph 29 of
28 the Complaint.

1 30. Moran admits that Lydia acquired a beneficial interest in the Trust, as alleged in
2 paragraph 30 of the Complaint. Based upon information and belief, Moran denies the remainder of
3 the allegations in paragraph 30.

4 31. With respect to the allegations of paragraph 31 of the Complaint, Moran admits that
5 the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint
6 speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as
7 factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or
8 the S.E.C.'s allegations are material to or dispositive of the issues in this case.

9 32. With respect to the allegations of paragraph 32 of the Complaint, Moran admits that
10 the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint
11 speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as
12 factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or
13 the S.E.C.'s allegations are material to or dispositive of the issues in this case.

14 33. With respect to the allegations of paragraph 33 of the Complaint, Moran admits that
15 the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint
16 speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as
17 factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or
18 the S.E.C.'s allegations are material to or dispositive of the issues in this case.

19 34. With respect to the allegations of paragraph 34 of the Complaint, Moran admits that
20 the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint
21 speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as
22 factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or
23 the S.E.C.'s allegations are material to or dispositive of the issues in this case.

24 35. With respect to the allegations of paragraph 35 of the Complaint, Moran admits that
25 the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint
26 speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as
27 factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or
28 the S.E.C.'s allegations are material to or dispositive of the issues in this case.

36. With respect to the allegations of paragraph 36 of the Complaint, Moran admits that the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or the S.E.C.'s allegations are material to or dispositive of the issues in this case. .

37. Moran is without sufficient information or belief to admit or deny the allegations in paragraph 37 of the Complaint; therefore, these allegations are denied.

38. With respect to the allegations of paragraph 38 of the Complaint, Moran admits that the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or the S.E.C.'s allegations are material to or dispositive of the issues in this case.

39. With respect to the allegations of paragraph 39 of the Complaint, Moran admits that the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or the S.E.C.'s allegations are material to or dispositive of the issues in this case.

40. With respect to the allegations of paragraph 40 of the Complaint, Moran admits that the S.E.C. initiated an action and made certain allegations in its Complaint. The S.E.C.'s Complaint speaks for itself and Moran denies any attempt by Plaintiff to characterize the S.E.C.'s allegations as factual averments requiring a response from Moran. Moran further denies that the S.E.C. action or the S.E.C.'s allegations are material to or dispositive of the issues in this case.

ANSWER TO COUNT I

41. With respect to paragraph 41 of the Complaint, Moran incorporates by reference, as if fully set forth herein, his answer and response to paragraphs 1 through 40 of the Complaint.

42. Moran is without sufficient information or belief to admit or deny the allegations in paragraph 42 of the Complaint; therefore, these allegations are denied.

43. With respect to the allegations in paragraph 43 of the Complaint, Moran specifically denies that any misrepresentations, if proven, were either material or relied upon by Lincoln. Moran is without sufficient information or belief to admit or deny the remaining allegations in paragraph 43 of the Complaint; therefore, these allegations are denied.

44. Moran denies the allegations in paragraph 44 of the Complaint.

ANSWER TO COUNT II

45. With respect to paragraph 45 of the Complaint, Moran incorporates by reference, as if fully set forth herein, his answer and response to paragraphs 1 through 44 of the Complaint. Moran further denies the allegations in paragraph 45 of the Complaint.

46. With respect to the allegations in paragraph 46 of the Complaint, based upon information and belief, Moran admits that Mr. Reyzin completed the sale and/or assignment of a beneficial interest in the Trust on behalf of Dawson, in his capacity as Trustee of the Trust, and that Lydia subsequently acquired the beneficial interest in the Trust. Moran denies that "Lydia engaged in a gamble upon the life of Mr. Black", as alleged. Moran is without sufficient information to admit or deny the remaining allegations in paragraph 46 of the Complaint; therefore, these allegations are denied.

47. Moran denies the allegations in paragraph 47 of the Complaint.

48. Moran denies Plaintiff is entitled to any of the relief sought in pages 10 and 11 of the Complaint.

JURY DEMAND

49. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Moran hereby requests a jury trial in the above-captioned action.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As the first, separate and affirmative defense Moran is informed and believes and thereon alleges that Plaintiff's Complaint fails to state a claim against Moran upon which relief can be granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 As the second, separate and affirmative defense Moran is informed and believes and thereon
3 alleges that this Court lacks personal jurisdiction over Moran.

4 **THIRD AFFIRMATIVE DEFENSE**

5 As the third, separate and affirmative defense Moran is informed and believes and thereon
6 alleges that this judicial district is not a proper venue for this action.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 As the fourth, separate and affirmative defense Moran is informed and believes and thereon
9 alleges that Plaintiff's claims are barred, in whole or part, by the doctrine of unclean hands.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 As the fifth, separate and affirmative defense Moran is informed and believes and thereon
12 alleges that Plaintiff's claims are barred, in whole or part, by the doctrines of waiver, laches and/or
13 estoppel.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 As the sixth, separate and affirmative defense Moran is informed and believes and thereon
16 alleges that Plaintiff has an adequate remedy at law; therefore, an equitable remedy, such as
17 rescission, is inappropriate.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 As the seventh, separate and affirmative defense Moran is informed and believes and thereon
20 alleges that the alleged misrepresentations supporting Plaintiff's claims, if proven, were immaterial.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 As the eighth, separate and affirmative defense Moran is informed and believes and thereon
23 alleges that the alleged misrepresentations supporting Plaintiff's claims, if proven, did not invoke any
24 reliance by Plaintiff.

25 **NINTH AFFIRMATIVE DEFENSE**

26 As the ninth, separate and affirmative defense Moran is informed and believes and thereon
27 alleges that if Plaintiff proves that the alleged misrepresentations supporting Plaintiff's claim were
28

1 actually made, the facts concerning these matters were known or could have been discovered by
2 Plaintiff.

3 **TENTH AFFIRMATIVE DEFENSE**

4 As the tenth, separate and affirmative defense Moran is informed and believes and thereon
5 alleges that if the parties cannot be restored to their positions prior to the contract, the Policy cannot
6 be rescinded.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 As the eleventh, separate and affirmative defense Moran is informed and believes and
9 thereon alleges that Moran expressly reserves the right to assert any additional defenses against
10 Plaintiff's claims that are shown to exist by reason of discovery and/or other proceedings in this case.

11 WHEREFORE, Defendant, H. Thomas Moran, II, Court-Appointed Receiver of Lydia
12 Capital, LLC, respectfully prays for judgment as follows:

13 1. That Plaintiff, The Lincoln National Life Insurance Company, take nothing by way of
14 its Complaint;

15 2. That this Honorable Court grant judgment for Defendant and against Plaintiff, The
16 Lincoln National Life Insurance Company, upon Plaintiff's claims;

17 3. For costs of suit incurred herein; and,

18 4. For such and other further relief as the Court may deem just and proper.

19 Dated: April 4, 2008

**SANDLER, LASRY, LAUBE, BYER
& VALDEZ LLP**

20
21 By: s/ Richard M. Valdez
22 Richard M. Valdez
23 Attorneys for Defendant
24 H. Thomas Moran, II, Court-Appointed
25 Receiver of Lydia Capital, LLC
26
27
28

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) THE LINCOLN NATIONAL LIFE INSURANCE COMPANY v. H. THOMAS MORAN, II, Court-Appointed Receiver of LYDIA CAPITAL, LLC		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): Richard M. Valdez, Bar No. 156957 SANDLER, LASRY, LAUBE, BYER & VALDEZ LLP 402 West Broadway, Suite 1700 San Diego, CA 92101-3542		
TELEPHONE NO.: Tel: (619) 235-5655 Fax: (619) 235-5648		
ATTORNEY FOR (NAME): Defendant		
ATTORNEYS FOR: H. THOMAS MORAN, II, Court-Appointed Receiver of LYDIA CAPITAL, LLC	HEARING DATE - TIME	CASE NUMBER: 08-CV-00023-IEG-NLS

PROOF OF SERVICE

I am a resident of the state of California over the age of eighteen years, and not a party to the within action. My business address is SANDLER, LASRY, LAUBE, BYER & VALDEZ LLP, 402 West Broadway, Suite 1700, San Diego, CA 92101-3542. On April 4, 2008, I served the within documents:

1. ANSWER OF DEFENDANT H. THOMAS MORAN, II, AS COURT-APPOINTED RECEIVER OF LYDIA CAPITAL, LLC TO COMPLAINT FOR DECLARATORY JUDGMENT; DEMAND FOR JURY TRIAL

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- ☐ by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

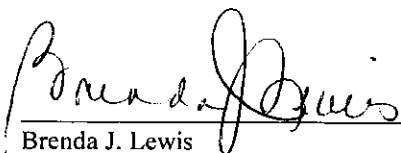
Jason P. Gosselin, Esq.
Heath M. Lynch, Esq.
DRINKER BIDDLE & REATH LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996
Telephone: (215) 988-2700

Attorneys for Plaintiff
The Lincoln National Life Insurance Company

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on April 4, 2008, at San Diego, California.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose directions the service was made.


Brenda J. Lewis